

2004

## Salt Lake City v. Newman : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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SALT LAKE CITY,

Plaintiff / Appellee,

vs.

GARRY ALLEN NEWMAN,

Defendant / Appellant.

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REPLY BRIEF OF APPELLEE

Case No. 20040452-CA

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Appeal from the Third District Court's denial of a petition for extraordinary relief from the Salt Lake City Justice Court's denial of a motion to dismiss.

UTAH COURT OF APPEALS  
BRIEF

UTAH

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IN THE UTAH COURT OF APPEALS

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SALT LAKE CITY,

Plaintiff/Appellee,

v.

GARY ALLEN NEWMAN,

Defendant/Appellant

Case No. 20040452-CA

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**JURISDICTIONAL STATEMENT**

Appellant/Defendant Gary Allen Newman (“Defendant”) appeals from the denial of his petition for extraordinary relief, entered by the Honorable J. Dennis Fredrick, Third District Court, Salt Lake County, Utah. The Defendant contends that this Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(f) (2002).

**STATEMENT OF THE ISSUE, STANDARD OF REVIEW, PRESERVATION**

Issue. Whether the district court properly denied and dismissed the Defendant’s petition for extraordinary relief where the Salt Lake City Justice Court performed its role required under the Utah Constitution in ruling the Salt Lake City ordinance is not in conflict with the Utah assault statute.

Standard of Review: When reviewing a district court’s denial and dismissal of a petition for extraordinary relief this Court reviews “the trial court’s conclusions of law

for correctness and its factual findings for plain error.” State v. Rees, 2003 UT App. 4, ¶3, 63 P.3d 120.

Preservation. This issue was preserved below. R. 1-26; 42-44.

### **RELEVANT RULE, STATUTES AND CONSTITUTIONAL PROVISIONS**

Salt Lake City Code Section 11.08.020

Utah Code Ann. § 78-5-120(1)(3)

Utah Rule of Civil Procedure 65B

### **STATEMENT OF THE CASE**

On or about March 20, 2003, the Defendant was arrested in Salt Lake City (“City”) for Battery in violation of Salt Lake City Code Section 11.08.020. R.2. Defendant filed a motion to dismiss in the Salt Lake City Justice Court that claimed the City’s Battery ordinance to be unconstitutional and in conflict with the Utah’s assault statute. R. 3; 14-16; 17-20. Judge John L. Baxter of the Salt Lake City Justice Court denied the motion because “the city ordinance [was] not in conflict with the state statute because they share a common purpose and are closely related in subject matter.” R. 14-16. On February 11, 2004, the Defendant challenged the Justice Court’s ruling by petitioning the District Court for a writ of extraordinary relief pursuant to Utah Rules of Civil Procedure 65B. R.1. The Defendant claimed that the Justice Court’s denial of the motion to dismiss constituted a failure to perform an act required by the Utah Constitution and abuse of discretion. R. 2-26. On March 18, 2004, the City filed a Memorandum in Opposition to the Defendant’s Petition for Extraordinary Relief that argued the proper remedy was a trial de novo in the District Court. R. 34-39. On May

17, 2004, the District Court denied and dismissed the Defendant's petition, reasoning the Justice Court fulfilled its Constitutional role in issuing a decision on the motion to dismiss and a trial de novo was the appropriate method to challenge a Justice Court ruling. R. 42-44.

### **STATEMENT OF THE FACTS**

On March 20, 2003, the City charged the Defendant with the domestic violence offense of Battery in violation of Salt Lake City Code § 11.08.020 ("Battery Ordinance"). R.2. The charge resulted from the Defendant arguing with his estranged wife, Mrs. Newman, over a rental car. R.3. Mrs. Newman asked the Defendant to leave. R.3. The Defendant refused to leave and Mrs. Newman called the police. R.3. After the police arrived, the Defendant attempted to grab the keys from Mrs. Newman's pants pocket. R.3. The police intervened to prevent the Defendant from approaching Mrs. Newman. R.3. After the police gained control of the Defendant, the police placed the Defendant under arrest for battery pursuant to Salt Lake City Code § 11.08.020. R.3.

The Defendant challenged the battery charge by filing a motion to dismiss before the Salt Lake City Justice Court. R.3; 14-16; 17-20. The Defendant argued that the conflict between the City's Battery ordinance and the Utah Assault statute rendered the Battery ordinance unconstitutional. R.3.; 14-16; 17-20. The Justice Court issued a timely ruling that denied the motion to dismiss. R. 14-16. The Justice Court held that the City ordinance complemented the state statute because both laws share a common purpose to further public safety. R. 14-16. The Defendant challenged the Justice Court's ruling by petitioning the District Court for extraordinary relief under Utah Rule of Civil



Procedure 65B. R. 1. The District Court denied the Defendant's petition and dismissed the matter. R. 42-44.

### **SUMMARY OF THE ARGUMENT**

Rule 65B(a) of the Utah Rules of Civil Procedure permit an extraordinary writ when a petitioner lacks any other "plain, speedy and adequate remedy." Utah Code Ann. § 78-5-120(1)(3) provides the appropriate remedy of a trial de novo in the District Court for a defendant to challenge a Justice Court ruling. Before a defendant can challenge a Justice Court ruling, the defendant must first exhaust his Justice Court remedies by proceeding to trial. If the Justice Court trial results in an acquittal, then the issue of the City ordinance's constitutionality becomes moot. The Defendant cannot circumvent the proper Justice Court procedure by petitioning for an extraordinary writ when trial de novo is the appropriate remedy.

Rule 65B(d) limits the grounds under which a Defendant may petition a court for extraordinary relief. In addition to other grounds, a petitioner is entitled to a writ for extraordinary relief when: (1) an inferior court exceeded its jurisdiction or abused its discretion; or (2) failed to perform and act required by law as a duty of office. In this case, the Justice Court did not abuse its discretion by denying the Defendant's motion to dismiss. In addition, the Justice Court fulfilled its constitutionally mandated role by issuing a decision on the Defendant's motion to dismiss. The fact that the Defendant disagrees with the Justice Court decision does not constitute an abuse of discretion or breach of duty.

Moreover, the City's Battery ordinance is not in conflict with the Utah Assault statute since both complement and further a common purpose and subject matter. The Utah Legislature granted municipalities the authority to enact ordinances necessary and proper to provide for the safety of the city and its inhabitants so long as they are not repugnant to law. However, the Utah Legislature did not assert that any inconsistency between municipal ordinances and state laws automatically void the municipal ordinance.

Municipal ordinances do not conflict with state statutes when they share a common purpose and are closely related in subject matter. The City's Battery ordinance is consistent with and related to the subject matter of the Utah Assault statute. Both share the common purpose of defining a "willful and unlawful use of force or violence upon the person of another" as assaultive conduct. The City's Battery ordinance does not impose a greater penalty than the Utah assault statute. Rather, the City ordinance created an offense for lesser conduct. Therefore, the City's ordinance and the State's statute are complementary and further the same purpose to preserve the public peace.

### **ARGUMENT**

**I. THE DISTRICT COURT PROPERLY DENIED THE DEFENDANT'S WRIT, BECAUSE A TRIAL DE NOVO IN DISTRICT COURT IS THE STATUTORY MANDATED METHOD TO APPEAL A JUSTICE COURT DECISION.**

Rule 65B(a) of the Utah Rules of Civil Procedure permit a petitioner to seek an extraordinary writ when the petitioner lacks any other "plain, speedy and adequate remedy." A criminal defendant has an appropriate remedy to challenge Justice Court decisions, after a finding of guilty or an entry of a guilty plea, by seeking a trial de novo in the District Court. Utah Code Ann. § 78-5-120(1)(3). The Utah Court of Appeal

upheld the constitutionality of the de novo appeal process from Justice Courts. *State v. Hinson*, 966 P.2d 273, (Utah Ct. App. 1998); *see also*, *State v. Stirba*, 972 P.2d 918, 919 (Utah Ct. App. 1998) (a writ may not substitute for an appeal). Under Utah law, a criminal defendant must first exhaust his Justice Court remedies that include a trial before seeking District Court review. The Justice Court's rejection of the Defendant's argument that the City's ordinance unconstitutionally conflicts with the State statute can be reviewed by the District Court at a trial de novo. If the Justice Court acquits the Defendant, then the issue of the constitutionality of the battery charge becomes moot. In the present case, the Defendant is attempting to improperly use a writ to circumvent the proper appellate process of a trial de novo.

## II. THE DISTRICT COURT PROPERLY DISMISSED THE DEFENDANT'S PETITION FOR EXTRAORDINARY RELIEF WHERE SALT LAKE CITY'S BATTERY ORDINANCE COMPLEMENTS, RATHER THAN CONFLICTS, WITH UTAH'S ASSAULT STATUTE.

Under Utah Rule of Civil Procedure 65B(d)(2), a petitioner is entitled to a writ for extraordinary relief only under the following conditions:

- a. Where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion;
- b. Where an inferior court, administrative agency, corporation, or person has failed to perform an act required by law as a duty of office, trust or station;
- c. Where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled; or

- d. Where the Board of Pardons and Parole has exceeded its jurisdiction or failed to perform an act required by constitutional or statutory law.

The Utah Rules of Civil Procedure 65B(d)(2)(B-D) are inapplicable to the Defendant's situation. There has been no failure to perform an act required by law as a duty of office, trust or station, there has been no refusal to the petitioner of the use or enjoyment of a right or office to which the petitioner is entitled and the Board of Pardons and Parole is not involved in the present case in any way. A writ is an inappropriate remedy in the present case because the Justice Court judge neither exceeded his jurisdiction nor abused his discretion. Therefore, the District Court properly denied the Defendant's petition for extraordinary relief.

The Defendant claims that the Justice Court "abused its discretion" by holding that the City ordinance did not unconstitutionally conflict with the State statute. Under the Defendant's reasoning, a Justice Court is barred from rendering any decision on constitutional grounds, because if the Justice Court finds a statute constitutional and permits the City to prosecute pursuant to the statute, then the Justice Court "abused its discretion." The Justice Court properly exercised its duty and discretion by finding the City ordinance constitutional.

**A. Salt Lake City's Battery Ordinance is Constitutional and Furthers the Purpose of Utah's Assault Statute**

A municipality possesses the authority to pass ordinances necessary and proper to provide for the safety of the city and its inhabitants so long as they are not repugnant to law. Utah Code Ann. §10-8-84. A city ordinance and a state statute are not in conflict

when both the city ordinance and the state statute share a common purpose and both are closely related in subject matter. *Salt Lake City v. Allred*, 437 P.2d 434 (Utah 1968). A municipal ordinance conflicts with a general law if the ordinance “forbids that which the statute permits.” *Richfield City v. Walker*, 790 P.2d 87, 91 (Utah Ct. App. 1990).

Salt Lake City Ordinance § 11.08.020 is clearly consistent with and related to the subject matter of Utah Code Ann. §76-5-102. Both share the common purpose of defining a “willful and unlawful use of force or violence upon the person of another” as assaultive conduct” and therefore are in harmony. The City ordinance does not prohibit conduct that the State statute permits. The Utah legislature has not passed a statute that permits “willful and unlawful use of force or violence upon the person of another.”

Rather, both laws prohibit violent behavior directed at another person. The City ordinance merely grants more protection to its citizens than the state statute. Based on the analysis as set forth in *Allred*, the city ordinance is a valid exercise of municipal power and complements the State statute.

Moreover, the only requirement for a valid ordinance is that the ordinance not be “repugnant to law.” Utah Code Ann. § 10-8-84 (2000). It seems clear based on this language the legislature was attempting to ensure a municipality would not be allowed to pass an ordinance prohibited by state law. In fact, nowhere in this grant of power does the legislature assert that any inconsistency between municipal ordinances and state laws automatically void the municipal ordinance. The Battery ordinance in question makes it a crime to use unlawful and willful force or violence on another. This is a valid exercise of the City’s power to provide for the safety, peace and good order of the city and its

inhabitants. Salt Lake City Code §11.08.020, by its own language was created for the purposes allowed under Utah Code Ann. §10-8-84, is not repugnant to law, and is therefore a valid exercise of the power granted the municipality under §10-8-84.

Moreover, a municipal ordinance is constitutional “where the ordinance prescribe[s] a smaller penalty” compared to the state statute. *Allred*, 437 P.2d at 436. In this case, the City’s Battery statute created an offense for lesser conduct. By strictly applying the reasoning of *Allred* to the matter at bar, the City would never be able to create an offense that had not already been created by the state legislature. However, this result conflicts with the purpose of Utah Code Ann. § 10-8-84 that permits a municipality to criminalize conduct that the State has not criminalized. Salt Lake City Code §11.08.020 merely extends more protection to its citizens not by expanding the state statute, but by narrowing the behavior allowed. Salt Lake City Code §11.08.020 is therefore a valid exercise of authority under Utah Code Ann. § 10-8-84.

B. The Justice Court Fulfilled Its Duty to Issue a Decision on the Defendant’s Motion to Dismiss. The Justice Court Properly Exercised Its Discretion by Deciding that the Salt Lake City Ordinance Constitutionally Complements the Utah Assault Statute.

Under Rule of Civil Procedure 65B(d)(2), an inferior court properly exercises its duty and discretion by issuing a decision. *Stirba*, 972 P.2d 918. A court does not neglect its duty or abuse discretion when the Defendant disagrees with the court’s decision. *Id.* at 921.

In *Stirba*, the Utah Court of Appeals properly held that a writ of mandamus was inappropriate where a judge performed an act required by law, but did not perform it to the satisfaction of the petitioner. *Id.* Likewise, the Justice Court judge performed the act


required by the Constitution when he reached a ruling on the merits of the Defendant's motion. The judge's decision, however, rejected the Defendant's arguments in the motion to dismiss. It is improper for the Defendant to use an extraordinary writ to challenge that decision. As noted in *Stirba*, a writ is appropriate to direct an inferior court to perform an act, but not proper to direct the court to exercise discretion in a particular way. *Id.* at 921. The Defendant's petition for a writ improperly petitioned the District Court to direct the Justice Court's discretion.

Defendant's reliance on *Dean v. Henriod*, 975 P.2d 946 (Utah Ct. App. 1999) is without merit. In *Henriod*, the defendant claims an abuse of discretion by the District Court judge. The Utah Court of Appeals agreed that because there was an alleged abuse of discretion of the district court judge, a writ was a proper remedy to review the alleged abuse of discretion. *Id.* at 949. In contrast, the Justice Court committed no abuse of discretion. After the submission and review of written arguments, the Justice Court heard several oral arguments regarding the validity of the City's Battery ordinance and then issued Findings of Fact and Conclusions of Law. At no time did the Justice Court exceed its jurisdiction nor abuse its discretion. Therefore, the District Court properly dismissed the Defendant's petition for extraordinary relief.

### **CONCLUSION**

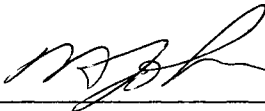
The Appellee, the City, respectfully requests this Court to affirm the district court's denial of the Defendant's petition for extraordinary relief.

SUBMITTED this 8<sup>th</sup> day of November, 2004.

  
DOUGLAS A. JOHNSON  
Attorney for Plaintiff/Appellee



I DOUGLAS A. JOHNSON certify I have caused to be delivered the original and seven copies of the foregoing to the Utah Court of Appeals, 450 South State Street, 5<sup>th</sup> Floor, P.O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to the Salt Lake Legal Defender Association's office, 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, this 8<sup>th</sup> day of November, 2004.

  
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DOUGLAS A. JOHNSON